

MEMORANDUM FOR: Deputy Director of Personnel

STATINTL

FROM : [redacted]  
Chief, Review Staff, OP

SUBJECT : Proposed Bill S-3572, Restriction on Employment STATINTL  
of Aliens in the Civil Service

REFERENCES : (a) Memo for [redacted] OLC fr [redacted] STATINTL  
OGC dtd 3 Aug 76, subj: Senate Bill 3572,  
6 June 1976  
(b) Memo for DD/Pers-R&P fr C/RS/OP dtd 13 Jul 76,  
same subj.

1. Prior to receiving the referent (a) memorandum, the Staff completed and forwarded its analysis of the effect the proposed amendment would possibly have on Agency recruitment practices, referent (b) attached. While in that analysis the Staff did not state categorically that the Agency would be exempt from the provisions of the amendment, as is the position taken by the Office of General Counsel in view of the fact that the Agency is not in the competitive service, we did note that the impact or effect would depend on the interpretation of the scope of "civil service" as used in the Bill. We agree that the Agency is not in the competitive service, but is in the excepted service. We disagree with the OGC conclusion, however, that being in the excepted service would automatically exclude one from the provisions of the amendment, by reason that "Senate Bill 3572, as presently constituted, is an amendment to 5 U.S.C.A. 3301. The annotation to that section discloses that the Civil Service rules derived from 3301 do not apply to employees in the "excepted service" (Rule 1.1, 1976 Supplement, page 266)." This section further states, however, that "Except as expressly provided in the Rule concerned, these Rules shall not apply to positions and employees in the excepted service." It does not state that none of the rules will apply, only that generally they do not apply. If we go to Rule 1.4, we find that "excepted service" shall have the same meaning as the words "unclassified service" or "unclassified civil service," or "positions outside the competitive civil service" as used in existing statutes and Executive Orders." (Emphasis added.)

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2. Senate Bill S-3572 is an amendment to "3301, Civil Service; generally." The historical notes to this section refer to the definition of "civil service" in section 2101. Section 2101 defines the "civil service" as consisting of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States. Section 2102 states the "competitive service" consists of ". . . all civil service positions in the executive branch . . ." and section 2103 states that the "excepted service" consists of those civil service positions which are . . ." (emphasis added in each case). It is evident from these sections that both the competitive and the executive service are included in the "civil service." Further we cannot imagine that the intent of the Bill was to exclude the excepted service from the provisions of the Bill, inasmuch as it includes over half of the total Federal employment.

3. Although of no bearing on the particular problem, we would call your attention to the errors in paragraph 5 of the referent (a). 21 U.S.C.A. 1180 does not exempt the Agency from the Civil Service Commission Drug Abuse Program. See OGC 76-0122, dated 24 December 1975. Also, we have a note from [redacted] OGC, dated 10/11/74 that "The exemption in both the Alcoholism Act of 1970 and Drug Abuse Act of 1972 exempt CIA only from the provisions concerning the denial of employment based on alcohol or drug abuse."

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4. If the intent of the Bill is to limit it strictly to the "competitive service," the inclusion of "competitive" in the Bill, as suggested by OGC, would certainly eliminate all cause for Agency concern with the Bill. As we do not discern this to be the intent of the Bill, we believe that specific exemptions should be sought for the Agency.

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